

**COMMONWEALTH OF VIRGINIA
THROUGH
THE TREASURY BOARD**

REQUEST FOR PROPOSALS # TB 06-004

for

**FINANCING OF ENERGY PROJECTS
UNDER A MASTER LEASE AGREEMENT**

**JODY M. WAGNER
TREASURER OF VIRGINIA**

Tina M. Mizelle, VCO
Procurement Officer

September 8, 2005

REQUEST FOR PROPOSALS
TB 06-004

ISSUE DATE: September 8, 2005

TITLE: **Financing of Energy Projects under a Master Lease Agreement**

ISSUING AGENCY: Attn: Tina M. Mizelle VCO, Procurement Officer
Commonwealth of Virginia
Department of the Treasury
P.O. Box 1879
Richmond, Virginia 23218-1879

USING AGENCY: Commonwealth of Virginia by the Treasury Board

PERIOD OF CONTRACT/AGREEMENT:

For financing requests received and approved by the Lessor for the twenty-four month period October 1, 2005 through September 30, 2007 or until a total of \$50,000,000 has been financed through the Agreement resulting from this solicitation, whichever occurs first, with an option to extend the period an additional six months or twelve months, or an additional \$15,000,000 or both, upon mutual written agreement.

Sealed Proposals Will Be Received Until **3:00 p.m. Tuesday, September 27, 2005.** Proposals must be received by this time and date to be accepted.

If Proposals Are Mailed, Mail Directly To Issuing Agency Shown Above, Add One Line To The Top Of The Address As Follows: Proposal for Master Lease Financing, RFP # TB 06-004

If Proposals Are Hand Delivered, Deliver To: Proposal for Master Lease Financing, RFP # TB06-004, Commonwealth of Virginia, Department of the Treasury, James Monroe Building - 3rd Floor, 101 North 14th Street, Richmond, Virginia 23219, Attn: Tina M. Mizelle, Procurement Officer.

If Proposals are submitted electronically, E-mail them to Tina Mizelle at: tina.mizelle@trs.virginia.gov .

All Inquiries Shall Be Directed To: Tina Mizelle by phone - (804) 786 – 4741, by fax - (804) 225-3187 or E-mail – tina.mizelle@trs.virginia.gov. Written (fax or e-mail) inquiries are preferred. **All inquiries shall be made prior to September 21, 2005 in order to allow time for any addendum needed to be distributed to all potential proposers.**

In Compliance With This Request For Proposals And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, *the undersigned Offeror agrees to finance Energy Projects at the rates indicated in Section VI, Bid Forms. The Undersigned offers and agrees to furnish Energy Leasing Services in accordance with the attached signed bid and the Master Lease Agreement.*

Offeror's Name:	By (Signature in Ink):
Complete Address:	Name (please print) and Title:
	Date:
City/State/Zip:	Federal Identification Number:
Telephone Number:	Facsimile Number:

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SECTION I: PURPOSE

The purpose of this Request for Proposals ("RFP") issued by the Commonwealth of Virginia (the "Commonwealth"), through its Treasury Board (the "Board"), is to solicit sealed proposals from duly qualified and eligible entities (the "Offerors") prepared to provide lease financing for the acquisition of certain energy efficiency projects (the "Projects"). The financing arrangement will take the form of a Master Lease Agreement (the "Agreement" or the "Contract") between the successful Offeror (the "Lessor") and the Board (the "Lessee") providing for, among other things, (i) entering into a Master Lease Agreement for the lease purchase of Energy Projects by agencies and institutions of the Commonwealth (the "Agencies") and (ii) the payment by the Agencies of Lease Payments pursuant to Appendices as defined and executed under the Agreement. A form of Master Lease Agreement is provided as Appendix C and is a part of this solicitation.

The Agreement in no way conveys exclusive financing rights to the Lessor. Agencies are allowed to obtain financing outside of the Master Lease with prior approval from the Treasury Board, and the Treasury Board is authorized to provide financing mechanisms/arrangements to agencies in addition to the financing to be provided under the Agreement.

Capitalized terms in this RFP shall have the meaning assigned to them in the Master Lease Agreement

SECTION II BACKGROUND

Under §2.2-2417 of the *Code of Virginia*, the Board's role is to review and approve financial terms of all contracts for the purchase of personal property by agencies, institutions, boards and authorities which receive appropriations from the Commonwealth, where payment of the purchase price is deferred through installment payments, includes the payment of interest or is otherwise financed by the seller, lessor or third party.

At its 2001 Session, the Virginia General Assembly enacted the Energy and Operational Efficiency Performance-Based Contracting Act which permits any public body to enter into an energy performance contract with an energy performance contractor to significantly reduce energy costs to a level established by the public body or operating costs of a facility through one or more energy conservation or operational efficiency measures.

On July 23, 2003 the Governor issued Executive Order 54 that directed the Governor's Secretaries and all executive branch agencies to reduce energy costs and consumption in state government operations by at least seven percent in 2004, when compared to a 2002 baseline and by at least ten percent by 2006 relative to a 2002 baseline, with a long-term goal of reducing energy consumption by the maximum amount feasible.

The Board operates an existing Master Lease Program which provides three, five, seven and ten year financing for equipment or energy projects.

The purpose of this procurement is to solicit proposals for financing, under a lease purchase financing arrangement for the acquisition by agencies of the Commonwealth of certain energy systems or equipment which may or may not be under an energy performance contract with an energy performance contractor. This financing program is intended to address financing needs for larger energy projects carrying an aggregate useful life in excess of the existing Master Lease program.

SECTION III: STATEMENT OF NEEDS

The firm(s) selected as a result of this RFP will provide lease financing to state agencies through a Master Lease Agreement for the acquisition of certain energy efficiency projects, including those through an energy performance contract with an energy performance contractor, upon delivery to the Lessor of an Appendix. The rate of interest to be charged for each financing will be determined and fixed on the Acceptance Date for such item or items based upon a percentage of the Index. Lease Payments shall be monthly, semi-annually or annually as determined on the Acceptance Date and will continue for the level specified term of financing or until prepaid in accordance with the Agreement. Lease Payments will be calculated based on a payment basis using a single fixed rate of interest for either the twelve (12) or fifteen (15) year terms. A reasonable construction period may be added to the financing term. Interest will be calculated on a 30/360 day basis. Financings will likely involve a construction period requiring the use of an escrow account.

The period of the Agreement shall be for Financing Request certificates received and approved by the Lessor for the twenty-four month period October 1, 2005 through September 30, 2007 or until a total of \$50,000,000 has been financed through the Agreement, whichever occurs first.

The Commonwealth may opt to extend the Contract for an additional six-month or twelve-month period or increase the amount to be financed by up to an additional \$15,000,000, or both, upon mutual written agreement between the Lessor and the Lessee. Upon mutual written agreement between the Lessor and Lessee, the percentage price may be adjusted at the end of the original twelve-month period and any subsequent twelve-month period.

SECTION IV: SCOPE OF SERVICE

- A. **TERMS OF THE MASTER LEASE AGREEMENT:** The Agreement provides for the lease financing of Energy Projects upon delivery to the Lessor of an Appendix. The rate of interest to be charged for each financing will be determined and fixed on the Acceptance Date based upon a percentage of the Index. Lease Payments may be monthly, semi-annually, or annually as determined on the Acceptance Date and will continue for the specified term of financing or until prepaid in accordance with the Agreement. Lease Payments will generally be calculated based on a level payment basis using a single fixed rate of interest for either twelve or fifteen-year terms. Interest will be calculated on a 30/360 day basis.

The period of the Agreement shall be for Financing Request certificates received and approved by the Lessor for the twenty-four month period October 1, 2005 through September 30, 2007 or until a total of \$50,000,000 has been financed through the Agreement, whichever occurs first.

The Commonwealth may opt to extend the Contract for an additional six-month or twelve-month period or increase the amount to be financed by up to an additional \$15,000,000, or both, upon mutual written agreement between the Lessor and the Lessee.

- B. **ENERGY PROJECTS TO BE FINANCED:** The energy projects will consists of equipment or services that reduce energy consumption or operating costs as may be permitted by the *Code of Virginia*, all subject to the Lessor's approval. Each Appendix will be equal to or greater than \$100,000. It is not known how the lease amounts will be distributed among the twelve and fifteen-year terms. The first table summarizes activity on similar projects approved by the Treasury Board from September 1, 2004 through August 31, 2005. The second table summarizes potential activity over the next two years based on estimates gathered from the agencies.

TREASURY BOARD APPROVED LEASES:

<u>AGENCY TYPE:</u>	<u>TERM:</u>	<u>LEASES:</u>	<u>AMOUNT FINANCED:</u>
Education	12/15 Years	6	\$53,458,705
Health and Human Resources	15 Years	3	\$23,964,790
Public Safety	15 Years	1	\$8,250,000
TOTALS		10	\$85,673,495

LEASES TO BE FINANCED*:

<u>AGENCY TYPE</u>	<u>TERM:</u>	<u>LEASES:</u>	<u>AMOUNT FINANCED:</u>
Education	15 Years	<u>4</u>	\$34,826,546
Health and Human Resources	15 Years	<u>3</u>	\$3,499,825
TOTALS		7	\$38,326,370

*The represent projects for which planning is known to be underway as of the date of this RFP.

- C. **ENERGY PROJECTS:** Energy Projects will consist of equipment and services that reduce energy consumption or operating costs. Projects may include but are not limited to: insulation, storm windows and doors, glazing, automatic energy control systems, including related hardware, improvements or retrofits to electrical, lighting and auxiliary systems, heating ventilating and air conditioning (HVAC) system modifications or replacements, energy recovery systems, cogeneration systems, renewable energy systems, such as solar, biomass and wind, devices that reduce water consumption and professional and non-professional services relating to the design, installation, training and monitoring of such equipment or systems, and subject to the Lessor's approval.
- D. **RATE:** Each Agency will make Lease Payments to the successful Bidder in equal monthly, semi-annual or annual installments based on a Percentage of the Index as described in the Agreement. Offerors are required to price a Percentage of the Index for each of the twelve and fifteen-year lease terms.
- E. **ESCROW FEES:** For Escrow Financings, each Agency will pay the applicable Escrow Fee as described in the Agreement.

SECTION V PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS:

1. RFP Response:

- a. Number of Copies. In order to be considered for selection, Offerors must submit a complete response to this RFP. One (1) electronic proposal OR five (5) copies must be submitted to the Treasury Board **no later than 3:00 p.m. Tuesday, September 27, 2005**. Additional copies shall be provided upon request at no charge. No other distribution of the proposal shall be made by the Offeror.

2. Proposal Preparation:

- a. Submission of Materials. An authorized representative of the Offeror shall sign proposals. All information requested should be submitted. Failure to submit all information requested may result in the Commonwealth requiring prompt submission of missing information and/or giving a lowered evaluation of the proposal. The Commonwealth may reject proposals, which are substantially incomplete or lack key information. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Small, Women-Owned, and Minority-Owned Business Reports. All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses, and minority-owned businesses shall be submitted. If an offeror fails to submit all information requested, the Commonwealth may require prompt submission of missing information after the receipt of the vendor proposals. (See **APPENDIX A.**)
- c. Clarity of Proposals. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- d. Organization of Proposal. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub-letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub-letter should be repeated at the top of the next page. Information, which the Offeror desires to present, that does not fall within any of the requirements of the RFP should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- e. Single Volume. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of Materials. Ownership of all data, materials and documentation originated and prepared for the Commonwealth pursuant to the RFP shall belong exclusively to the Commonwealth and are subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by an Offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror shall invoke the protection of Section 2.2-4342F of the *Code of Virginia*, in writing, either before or at the time the data or other material is submitted. The written notice shall specifically identify the data or materials to be protected and state the reasons why protection is

necessary. The proprietary or trade secret material submitted shall be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **THE CLASSIFICATION OF AN ENTIRE PROPOSAL DOCUMENT, LINE ITEM PRICES AND/OR TOTAL PROPOSAL PRICES AS PROPRIETARY OR TRADE SECRETS IS NOT ACCEPTABLE AND MAY RESULT IN THE REJECTION OF THE PROPOSAL.**

3. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to a designated committee of the Commonwealth. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This would be a fact finding and explanation session only and does not include negotiation. The Commonwealth will schedule the time and location of these presentations. Oral presentations are an option of the Commonwealth and may or may not be required.

B. SPECIFIC REQUIREMENTS:

Proposals should be as thorough and detailed as possible so that the evaluation panel may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items, as a complete proposal:

TAB 1. The complete RFP and addenda, if any, filled out as required and signed.

TAB 2. General Qualifications:

1. Describe your firm's qualifications and capabilities to meet the requirements of this RFP, note any similar engagement in which your firm has been involved.
2. Provide the contact personnel including senior level management who will be responsible for the relationship between your firm and the Department. Identify the primary contact for this engagement.
3. Provide contact information from 3 clients for similar engagements.
4. Please disclose any conflicts of interest or potential conflicts of interest that may arise as a result of your being hired for this engagement. Identify fully the extent to which your firm or individual partners or employees are the subject of any ongoing securities investigation, are a party to any securities litigation or arbitration, or are the subject of a subpoena in connection with a municipal securities investigation. In addition, include any such investigations which concluded in an enforcement or disciplinary action ordered or imposed in the last three years.
5. Describe/discuss any recommendations or alternatives the Commonwealth may consider in structuring an energy financing program (such as mode, financing options, documentation, etc.)
6. Specify any requirements or documentation, if any, that will be required in addition to the Appendix in funding a lease (e.g., opinions, assignment provisions, bonding, etc).

TAB 3. Specific plans for providing the proposed services including:

Provide any comments for required changes to the Commonwealth's Master Lease Agreement. Briefly summarize material terms or conditions that would be required as conditions precedent to the delivery of the Master Lease Agreement.

Under Virginia law, *neither the Commonwealth or the Treasury Board under this RFP will waive sovereign immunity*. This means, for example, that none of the Commonwealth or such authorities or issuers will enter into indemnification obligations (whether or not qualified) or agree to waive their respective rights to a jury trial or agree to mandatory arbitration.

TAB 4. Proposed Price:

1. Complete the Pricing Schedule provided in Section XI. Be sure to include (a) your proposed percentage of the Index, (b) specify on which Index your price is based (i.e., U. S. Treasury Note or Municipal Market Data (MMD) and state your price as a percentage of the selected Index. The Index is defined as EITHER (i) the annualized interest rate on the ten-year Treasury Notes on a weekly average basis for the week preceding the Acceptance Date as published by the Federal Reserve OR (ii) the Municipal Market Data (MMD) General Obligation Yield on triple-A (pure) bonds for the twelve or fifteen-year bond on the business day preceding the Acceptance Date as provided by MMD.
2. Please provide an estimate of any costs associated with an Escrow Agreement (e.g., bank fees, legal etc.). Specify the bank you would propose serve as Escrow Agent.
3. Specify and estimate any other fees that may be required. **The Commonwealth will not be responsible for paying any fees or expenses that are not disclosed as part of this Pricing Schedule.**
4. Specify any optional structural features that may lessen the costs for the Commonwealth.

The award document will be a Contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated. The Commonwealth reserves the right at any time to reject any or all proposals received. The Commonwealth also reserves the right to negotiate with one or more providers in its sole discretion.

TAB 6. Small, Women-Owned, and Minority-Owned Business Participation:

The Offeror should submit the following three sets of data for small business, women-owned business minority-owned business: 1) ownership, 2) utilization of small, women-owned and minority-owned businesses for the most recent 12 months, and 3) planned involvement of small businesses, women-owned businesses and minority owned businesses on the current procurement. **Appendix A** contains the format for providing this information.

SECTION VI EVALUATION AND AWARD CRITERIA

- A. All proposals received will be reviewed and evaluated by a Selection Committee. The Selection Committee will recommend proposals, which most closely meet the requirements of the RFP. The following will be used in making the selection:
1. Offeror's Qualifications -- This criterion includes the ability of the Offeror to meet the terms of the RFP and the Offeror's experience providing similar services. (Weighted at 35%)
 2. Pricing -- Charges should be broken down as outlined in Section XII, PRICING SCHEDULE. While this area will be weighted heavily, it will not be the primary deciding factor in the selection process. (Weighted at 45%)
 3. Financial Terms -- Proposals that responsibly maximize the net economic benefit to the Commonwealth over the term of the Master Lease Agreement and that responsibly minimize the risk to the Commonwealth in connection with the proposed transaction. (weighted at 15%)
 4. Participation of Small, Women-Owned, and Minority-Owned Businesses -- Emphasis is on the past, current, and planned utilization of businesses in the three classes identified. (Weighted at 5%)

- B. Award of Contract: Selection shall be made of the Offeror deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request For Proposals, including price, if so stated in the Request For Proposals. Negotiations may be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the Board shall select the Offeror that, in its opinion, has made the best proposal, and shall award the Contract to that Offeror. The Commonwealth may cancel this Request For Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (Section 2.2-4359D, *Code of Virginia*). Should the Commonwealth determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror. The award document will be a Contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated. The award document will be a Contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.

SECTION VII REPORTING AND DELIVERY REQUIREMENTS

The Contractor shall meet the following reporting and delivery requirements:

By submitting a proposal, the Contractor covenants and agrees that he has satisfied himself, from his own investigation of the conditions to be met, that he fully understands his obligation and that he will not make any claim for, or have right to cancellation or relief from the Agreement because of any misunderstanding or lack of information. At the time of the signing of the Agreement, the Lessor shall certify that:

1. The Lessor has knowledge and experience in financial and business matters that renders it capable of evaluating the merits and risks of investment in the Agreement and has received such information as it has deemed necessary to make such evaluation, and
2. The Lessor is able to bear the economic risk of investment in the Agreement.

The Commonwealth has not prepared an official statement or other offering materials in connection with this Request for Proposals or the Master Lease Agreement and does not intend to prepare such materials. The Commonwealth shall be under no obligation to provide any legal opinions or other representations, except those described herein. **No Offeror may undertake any public offering of the Agreement or any Appendix thereto or any interest or certificates therein, except as provided in the Agreement.**

SECTION VIII: PRE-PROPOSAL CONFERENCE

OPTIONAL PRE-PROPOSAL CONFERENCE: A pre-proposal conference **is not contemplated at this time.**

SECTION IX GENERAL TERMS AND CONDITIONS

- A. VENDORS MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this Contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.virginia.gov/dps under "Manuals."
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations. Venue shall be in state or federal court located in Richmond, Virginia.

- C. **ANTI-DISCRIMINATION:** By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the *Virginia Public Procurement Act*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia* § 2.2-4343.1E). In every Contract over \$10,000 the provisions in 1. and 2. below apply:
1. During the performance of this Contract, the Contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- F. **DEBARMENT STATUS:** By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts by any agency of the Commonwealth of Virginia for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- G. **ANTITRUST:** By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.
- H. **MANDATORY USE OF STATE FORMS AND TERMS AND CONDITIONS:** Failure to submit a proposal on the official state form provided for that purpose shall be a cause for rejection of the proposal. Modification of or additions to any portion of the general terms and conditions of the solicitation may be cause for rejection of the proposal; however, the

I. Commonwealth reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.

J. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

K. PAYMENT:

1. To Prime Contractor:

- a. Except as otherwise indicated in this solicitation, or unless otherwise set forth in the Standby Bond Purchase Agreement, invoices shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges, which it considers unreasonable, and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A Contractor awarded a Contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

- (2) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
- K. PRECEDENCE OF TERMS: Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.
- M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT: A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.
- O. CHANGES TO THE CONTRACT: Changes can be made to the Contract in any of the following ways:
- 1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
 - 2. The Issuing Agency may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Issuing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Issuing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or

- c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Issuing Agency with all vouchers and records of expenses incurred and savings realized. The Issuing Agency shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Issuing Agency within thirty (30) days from the date of receipt of the written order from the Issuing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by the Issuing Agency or with the performance of the Contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.
- Q. TAXES: Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this Contract shall usually be free of Federal excise tax and transportation taxes. The Commonwealth's excise tax exemption registration numbers is 54-73-0076K.
- R. USE OF BRAND NAMES: Omitted.
- S. TRANSPORTATION AND PACKAGING: Omitted.
- T. INSURANCE: By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

1. Worker's Compensation - Statutory requirements and benefits; require that the Commonwealth of Virginia be added as an additional named insured on Contractor's policy.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia is to be named as an additional named insured with respect to the services being procured. These coverages are to include Products and Completed Operations Coverage.

4. Automobile Liability - \$500,000 - Combined single limit. (Only used if motor vehicle is to be used in the Contract.)

U. ANNOUNCEMENT OF AWARD: Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, the Issuing Agency will publicly post such notice on the 3rd floor receptionist area, Department of the Treasury, 101 N. 14th Street, Richmond, Virginia, the DGS/DPS eVA website www.eva.virginia.gov and on the Treasury website at www.trs.virginia.gov for a minimum of 10 days.

V. DRUG-FREE WORKPLACE: During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

W. NONDISCRIMINATION OF CONTRACTORS: A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services or disbursements from an alternative provider.

SECTION X SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING:** In the event a Contract is awarded for supplies, equipment, or services resulting from this proposal, no indication of such sales or services to the Treasury Board will be used in product literature or advertising. The Contractor shall not state in any of the advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this Contract, electronically and/or by hard copy, until termination of the contract at which time such books, records, and documents will be transferred to the successor or the Treasury Board. The agency, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement. (See Section X: Method of Payment.)
- D. **AWARD OF CONTRACT:** Selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price. Negotiations shall be conducted with the Offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each Offeror so selected, the Treasury Board shall select the Offeror that, in its opinion, has made the best proposal, and shall award the Contract to that Offeror. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous. (Section 2.2-4359D, *Code of Virginia*.) Should the Commonwealth determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a Contract may be negotiated and awarded to that Offeror. The award document will be a Contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Contractor's proposal as negotiated.
- E. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a best and final offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror(s) proposal(s) will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.
- F. **BID ACCEPTANCE PERIOD:** Any bid in response to this solicitation shall be valid for 120 days. At the end of the 120 days the bid may be withdrawn at the written request of the Bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is cancelled.
- G. **CANCELLATION OF CONTRACT:** The issuing Agency reserves the right to cancel and terminate any resulting Contract, in part or in whole, without penalty, upon 90 days written notice to the Contractor. In the event the initial Contract period is for more than 12 months, the resulting Contract may be terminated by either party, without penalty, after the initial 12 months of the Contract period upon 90 days written notice to the other party. Any Contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- H. **EXTRA CHARGES NOT ALLOWED:** No additional charges will be allowed under the Contract. Any changes to the scope of services that impact prices must be approved in advance by the Treasury Board.
- I. **INSURANCE, MONEY AND SECURITIES:** Contractor shall maintain a Broad Form Money and Securities Insurance Policy obtained from an insurance company licensed to conduct crime insurance business in the home state of the Contractor and which has earned an A.M. Best Company, Inc. rating of A or better, as reflected in their most current publication, covering all money and property entrusted to the Contractor by the Commonwealth of Virginia for Loss

Inside the Premises Coverage and for Loss Outside the Premises Coverage, with limits of coverage to be determined by the Contractor and the Treasury Board. Certificate of such protection must be presented to the Issuing Agency prior to the start of the service showing name of insurance company, limits and types of coverage, term of coverage, additional insured provision and name and address of licensed insurance agent. The Contractor agrees to maintain such policy until the completion of the Contract and all money and property of the Commonwealth is remitted to the Commonwealth.

- J. LATE PROPOSALS: To be considered for selection, proposals must be received by the Treasury Board by the due date and time designated on the cover page of this RFP. Proposals received after the due date and time are automatically disqualified and will not be considered. The Department of the Treasury is not responsible for delays in the delivery of mail by the U. S. Postal Service or private couriers. It is the sole responsibility of the Offeror to ensure that its proposal reaches Treasury by the designated due date and time.
- K. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this Contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the prime Contractor. The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- L. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the issuing Agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Issuing Agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the Contract.
- M. RENEWAL OF CONTRACT: This Contract may be renewed by the Commonwealth upon written agreement of both parties. The period of engagement will run through September 30, 2007, unless extended for six months or twelve months, in accordance with the Terms and Conditions herein.

SECTION XI METHOD OF PAYMENT

Invoices for Lease Payments shall be submitted by the Lessor directly to the Agency at the Agency Billing Address shown on the Appendix. All invoices shall show the state Contract/Agreement number and the federal employer identification number of the Lessor.

Lease Payments will be made in accordance with the Virginia Prompt Payment Act. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last.

The date of payment shall be the date of postmark in all cases where payment is made by mail or the date of transfer when payment is made electronically.

SECTION XII PRICING SCHEDULE

The completed pricing schedule must be contained within Section V, Tab 5; of the Offeror's proposal. Refer to Section V: PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS.

COMMONWEALTH OF VIRGINIA THROUGH THE TREASURY BOARD PRICE SHEET

1) **Specify the Index and the percentage of the Index* to be used:**

- ☐ **Treasury Note Index** - the annualized interest rate on the ten-year Treasury Notes as reported by the Federal Reserve on a weekly average basis for the week preceding the Acceptance Date
- ☐ **MMD Index** - the Municipal Market Data (MMD) General Obligation Yield on triple-A (pure) bonds for the twelve or fifteen-year maturities on the business day preceding the Acceptance Date as published by MMD.

Indicate the Percentage of the Index for each of the lease terms stated below.

Lease Term	Percentage of Index*	Treasury Note Index	MMD Index
144 months	_____	10 year	12 year
180 months	_____	10 year	15 year

- 2) **Provide an estimate of any costs associated with the Escrow Agreement (e.g., bank fees, legal, etc.).**
- 3) **Specify the bank you would propose serve as Escrow Agent.**
- 4) **Suggest optional structural features that may lessen the costs for the Commonwealth.**
- 5) **Describe any additional Out-of-Pocket Fees and Charges that might be required (Note: The Commonwealth will not be responsible for paying any fees and expenses that are not disclosed on the price sheet).**
- 6) **Comments:**

*Prices may be rounded no more than four (4) decimal places

Offeror's Name:	By (Signature in Ink):
Complete Address:	Name (please print) and Title:
	Date:
City/State/Zip:	Federal Identification Number:
Telephone Number:	Facsimile Number:

SECTION XIII APPENDICES and DEFINITIONS

APPENDIX A

APPENDIX A

**OFFEROR'S REPORT OF SMALL, WOMEN-OWNED, AND
MINORITY-OWNED BUSINESSES AND DEFINITIONS**

**PARTICIPATION OF SMALL, WOMEN OWNED,
AND MINORITY OWNED BUSINESSES**

1. Participation by Small Businesses:

- a. Offeror certifies that it () is, () is not, a small business concern (including its affiliates) which is independently owned and operated. For the purpose of this procurement, a small business is a concern that is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.
- b. List small businesses with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data is available. Offerors are encouraged to provide additional information and expand upon the following format:

<u>PERIOD:</u>	From: _____	To: _____		
FIRM NAME, ADDRESS, PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	%TOTAL CO. EXPENDITURES FOR GOODS & SERVICES ***

***** WHEN FIGURING THE TOTALS IN THIS COLUMN, THE TOTAL EXPENDITURES FOR ALL THREE CATEGORIES (SMALL, WOMEN AND MINORITY-OWNED BUSINESSES) CAN NOT EXCEED 100%.*****

- c. Describe Offeror's plans to involve small businesses in the performance of this Contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

<u>PERIOD:</u>	From: _____	To: _____		
FIRM NAME, ADDRESS, PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT***

***** WHEN FIGURING THE TOTALS IN THIS COLUMN, THE TOTAL EXPENDITURES FOR ALL THREE CATEGORIES (SMALL, WOMEN AND MINORITY-OWNED BUSINESSES) CAN NOT EXCEED 100%.*****

2. Participation by Businesses Owned by Women:

- a. Offeror certifies that it () is, () is not, a women's business enterprise or women owned business. For the purpose of this procurement, a woman owned business is a concern that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.
- b. List businesses owned by women with whom the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data is available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS, PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	%TOTAL CO. EXPENDITURES FOR GOODS/SERVICES WOMEN-OWNED BUS.***
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*****WHEN FIGURING THE TOTALS IN THIS COLUMN, THE TOTAL EXPENDITURE FOR ALL THREE CATEGORIES (SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES) CAN NOT EXCEED 100%.*****

- c. Describe Offeror's plans to involve businesses owned by women in the performance of this Contract, either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS, PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT WOMEN-OWNED BUS.***
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*****THIS COLUMN REFLECTS WHAT PERCENTAGE OF THE 100% VALUE OF THIS CONTRACT YOU WILL AWARD TO WOMEN-OWNED BUSINESSES*****

3. Participation by Businesses Owned by Minorities:

- a. Offeror certifies that it () is, () is not, a minority business enterprise or minority owned business. For the purpose of this procurement, a minority-owned business is a concern that is at least 51 percent owned by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.
- b. List businesses owned by minorities with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data is available. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME, ADDRESS & PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% TOTAL CO. EXPENDITURES FOR GOODS/SERVICES FROM MINORITY-OWNED BUS.***
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*****WHEN FIGURING THE TOTALS IN THIS COLUMN, THE TOTAL EXPENDITURE FOR ALL THREE CATEGORIES (SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES) CAN NOT EXCEED 100%.*****

- c. Describe Offeror's plans to involve minority businesses in the performance of this Contract, either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

PERIOD: From: _____ To: _____

FIRM NAME,

ADDRESS & PHONE NO.	CONTACT PERSON	TYPE GOODS/ SERVICES	DOLLAR AMOUNTS	% OF TOTAL CONTRACT MINORITY-OWNED BUS.***
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*****THIS COLUMN REFLECTS WHAT PERCENTAGE OF THE 100% VALUE OF THIS CONTRACT YOU WILL AWARD TO MINORITY-OWNED BUSINESSES.*****

DEFINITIONS

For the purpose of this RFP, the following shall serve as definitions:

PERIOD is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

FIRM NAME, ADDRESS AND PHONE NUMBER is the name address and business phone number of the small business, women owned business or minority owned business with which the Offeror has contracted or done business over the specified period or plans to involve on this Contract, as applicable.

CONTACT PERSON is the name of the individual in the specified small business, women owned business or minority owned business who would have knowledge of the specified contracting and would be able to validate the information provided in this list.

TYPE GOODS OR SERVICES is the specific goods or services the Offeror has contracted for from the specified small, women owned or minority owned business over the specified period of time or plans to use in the performance of this Contract, as applicable. The Offeror will asterisk (*) those goods and services that are in the Offeror's primary business or industry.

DOLLAR AMOUNT is the total dollar amount (in thousands of dollars) the Offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this Contract, as applicable.

% TOTAL COMPANY EXPENDITURES FOR GOODS AND SERVICES is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the Offeror over the specified period for goods and services.

% OF TOTAL CONTRACT is calculated by dividing the estimated dollars planned for the indicated firm on this Contract by the total Offeror estimated price of this Contract.

SMALL BUSINESS is a concern that is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.

WOMAN-OWNED BUSINESS is a concern that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.

MINORITY-OWNED BUSINESS is a concern that is at least 51 percent owned by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

APPENDIX B
FORM OF COMMONWEALTH OF VIRGINIA CONTRACT

Appendix B represents the proposed Contract which the Commonwealth would expect the Contractor to sign. Please note any suggestions or additions you would like considered.

COMMONWEALTH OF VIRGINIA
Department of the Treasury
FINANCING UNDER A MASTER LEASE AGREEMENT
Contract Number **TB 06-004**

This Contract is entered into this ___ day of _____, 2005, by _____, hereinafter called the "Contractor", and the Commonwealth of Virginia Department of the Treasury, hereinafter called the "Issuing Agency".

WITNESSETH that the Contractor and the Issuing Agency, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the services to the Commonwealth as set forth in the Contract Documents.

PERIOD OF CONTRACT: For the twenty-four-month period October 1, 2005 through September 30, 2007 or until a total of \$50,000,000 has been financed, whichever occurs first, with an option to extend the period for an additional six months or twelve months, or the maximum expenditures an additional \$15,000,000 or both, upon mutual written agreement.

CONTRACT DOCUMENTS: The Contract Documents shall consist of:

- (1) this signed Contract;
- (2) The following portions of the Request for Proposals dated September __, 2005:
 - (a) The Scope of Service
 - (b) The General Terms and Conditions
 - (c) The Special Terms and Conditions, together with any negotiated modifications of those Special Conditions
- (3) The Contractor's Price dated [XXXX ##, 20##]; and
- (4) The executed Master Lease Agreement.

Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in the Commonwealth of Virginia's Vendor's Manual.

IN WITNESS WHEREOF the parties have caused this Contract to be duly executed intending to be bound thereby, and certify they are authorized to sign this Contract for the Contractor or the Commonwealth.

CONTRACTOR

ISSUING AGENCY

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, Section 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment

Commonwealth of Virginia – Department of the Treasury
Financing Under A Master Lease Agreement
RFP #TB06-004 Due: September 27, 2005

APPENDIX C
COMMONWEALTH OF VIRGINIA
MASTER LEASE AGREEMENT

Appendix C represents the Master Lease Agreement which the Commonwealth would expect the Lessor to sign. Please note any suggestions or additions you would like considered. **The Commonwealth may consider, but is not obligated to accept any such suggestions or additions.**

MASTER LEASE AGREEMENT

This MASTER LEASE AGREEMENT dated as of October 1, 2005 is between _____ as the lessor hereunder (the "Lessor"), and the Commonwealth of Virginia (the "Commonwealth"), as lessee hereunder by and through the Treasury Board acting on behalf of various Agencies of the Commonwealth (the "Lessee").

RECITALS

Whereas, various agencies and institutions (the "Agencies") of the Commonwealth of Virginia desire to enter into arrangements for the lease purchase of various Energy Projects, referred to collectively herein as "Projects", and

Whereas, lessor desires to provide for the financing of such Projects by entering into this Agreement,

NOW, THEREFORE, in consideration of the funds to be paid hereunder and the covenants and agreements contained herein, it is agreed by and between the parties as follows:

ARTICLE 1.

DEFINITIONS

For purposes of this Agreement and in addition to the terms defined elsewhere in this Agreement, the following terms have the meanings given below unless the context clearly requires otherwise:

- 1.1 **Acceptance Certificate:** means the certificate substantially in the form of Schedule 1 of the Appendix.
- 1.2 **Acceptance Date:** means the date on which an Appendix is express mailed via overnight delivery to the Lessor. The Lessee will not date and mail an Appendix to the Lessor more than fourteen calendar days before the Vendor Payment Date unless mutually agreed to by the Lessor and the Lessee.
- 1.3 **Acquisition Period:** means the period commencing upon execution of this Agreement and ending on the earlier of September 30, 2007 or the date when the aggregate amount of equipment leased reaches \$50,000,000, unless this Agreement is extended as provided in Section 3.4. All financing requests received and approved by the Lessor during the Acquisition Period up to the limits of this Agreement, although not actually leased during that period, shall be governed by the terms and conditions of this Agreement as if leased during the Acquisition Period.
- 1.4 **Agency:** means any agency, institution, board or authority of the Commonwealth of Virginia that receives appropriations from the General Assembly of the Commonwealth.
- 1.5 **Agency Representation Certificate:** means the certificate substantially in the form of Schedule 3 of this Appendix.
- 1.6 **Agreement:** means this Master Lease Agreement as the same may be amended and supplemented from time to time in accordance with its terms.
- 1.7 **Appendix:** means the Acceptance Certificate, the Disbursement Authorization Certificate, the Agency Representation Certificate, and the Payment Schedule Certificate, substantially in the form attached hereto.

- 1.8 **Attorney General:** means the Attorney General, Senior Assistant Attorney General or an Assistant Attorney General of the Commonwealth of Virginia.
- 1.9 **Authorized Representative:** when used with respect to Lessee means the Treasurer of the Commonwealth of Virginia or other designee of the Treasury Board.
- 1.10 **Business Day:** means any day other than a Commonwealth holiday, a Saturday, Sunday or day upon which banks in the Commonwealth of Virginia are authorized or required to be closed.
- 1.11 **Disbursement Authorization Certificate:** means the certificate substantially in the form of Schedule 2 of the Appendix.
- 1.12 **Energy Project:** means the equipment or services including improvements or retrofits to electrical, lighting and auxiliary systems, heating ventilating and air conditioning systems, building improvements and professional and nonprofessional services relating to the design, installation, training and monitoring of such equipment or systems, all consistent with the Using Agency's energy efficiency plan developed in accordance with guidelines issued by the Department of Mines, Minerals and Energy and subject to the Lessor's approval.
- 1.13 **Escrow Agent:** means a national banking association duly organized, existing and authorized to accept escrow deposits set out under and by virtue of the laws of the United States of America. The Escrow Agent shall be chosen by the Lessor subject to approval by the Lessee, which approval shall not be unreasonably withheld.
- 1.14 **Escrow Agreement:** means a mutually acceptable Agreement between the Lessee, Lessor and the Escrow Agent which sets forth the mutual covenants, agreements, terms and conditions governing the deposit of moneys into an Escrow Fund pursuant to an Escrow Financing.
- 1.15 **Escrow Fee:** means the fee to be paid for the services of an Escrow Agent as established in the Escrow Agreement. The Escrow Fee may be paid from escrow earnings.
- 1.16 **Escrow Financing:** means the financing of Equipment to be purchased over an extended period of time whereby the Lessor provides, in advance of the acquisition of the Equipment, the total amount needed to purchase the Equipment. Such amount shall be deposited in an Escrow Fund to be held in custody of an Escrow Agent. The Lessor, the Lessee, and the Escrow Agent will enter into a mutually acceptable Escrow Agreement prior to commencement of an Escrow Financing. The Lessee agrees to pay the Escrow Fee as defined herein.
- 1.17 **Escrow Fund:** means a special and irrevocable fund to be held in the custody of the Escrow Agent separate and apart from other funds of the Lessor, Lessee or the Escrow Agent.
- 1.18 **Financing Request Certificate:** means the certificate substantially in the form attached hereto.
- 1.19 **Index:** means (one of the following to be determined at the time of award of the Contract)
(i) the annualized interest rate on the ten-year Treasury Note as reported by the Federal Reserve on a weekly average basis for the week preceding the Acceptance Date as published by the Federal Reserve. For leases of a twelve-year term, the Index shall be the ten-year Treasury Note as reported by the Federal Reserve. For leases of a fifteen-year term, the Index shall be the ten year Treasury Note as reported by the Federal Reserve. OR
(ii) the Municipal Market Data (MMD) General Obligation Yield on triple-A (pure) bonds for the twelve or fifteen-year maturities on the business day preceding the Acceptance Date as published by Thomson Financial. For leases of a twelve-year term, the Index shall be the yield on triple-A bonds maturing in twelve years as reported by MMD. For leases of a fifteen-year term, the Index shall be the yield on triple-A bonds maturing in fifteen years as reported by MMD.

- 1.20 **Lease Payment:** means the payment(s) from an Agency to the Lessor as established in The Payment Schedule Certificate.
- 1.21 **Payment Schedule Certificate:** means the certificate substantially in the form of Schedule 4 of the Appendix.
- 1.22 **Percentage Price:** means the percentage price by the Lessor which is to be applied to the Index in the calculation of the Payments in an Appendix.
- 1.23 **Rate:** means the rate of interest charged by the Lessor to the Lessee which is determined by multiplying the Index by the percentage price.
- 1.24 **Rate Adjustment:** means at the end of the original twelve-month period or any subsequent twelve-month period, the percentage price may be adjusted upon mutual written agreement between the Lessor and Lessee.
- 1.25 **Transaction Documents:** means the Agreement and all attachments and schedules thereto and the Solicitation, Offer and Award.

ARTICLE 2.

PURPOSE

- 2.1 Lessor reserves the right to reject for financing those items or Projects which the Lessor determines to (i) be non-essential, (ii) have a financing term exceeding the useful life of the Project, or (iii) represent a completion and/or performance risk which is disproportionate to other Projects. Lessor will review the Financing Request Certificate and provide an approval/disapproval within a reasonable period of time, not to exceed seven (7) business days. Lessor shall, upon request of the Lessee, provide written justification for any disapproved financing requests.
- 2.2 Upon approval of a Financing Request Certificate, Lessor agrees to lease the Project to Lessee upon the execution and delivery by Lessee of an Appendix, and Lessee agrees to lease Project from Lessor for the consideration indicated in an Appendix.
- 2.3 No payments will be due under this Agreement by Lessor until the Lessor has been provided an Appendix signed by an Authorized Representative of the Commonwealth. No Payments will be due from an Agency to a Lessor until Lessor has made payment to the Vendor, or the Agency, or the Escrow Agent, as applicable.

ARTICLE 3.

TERM

- 3.1 Notwithstanding the fact that the term of this Agreement is concurrent with the Acquisition Period and any extension thereof under Section 3.4, the provisions of this Agreement shall continue to apply to each Project financed under this Agreement for the period set forth on the original Equipment Schedule unless earlier terminated or prepaid as provided herein.
- 3.2 A fixed rate of interest will be established on the Acceptance Date for a Project through execution of an Appendix by multiplying the Percentage Price times the Index.

- 3.3 The term of each Appendix entered into pursuant to this Agreement shall be for a period of twelve (12) or fifteen (15) years.
- 3.4 This Agreement may be extended for an additional six (6) month period or twelve (12) month period, or the credit limit for up to an additional \$15,000,000, or both, upon mutual written agreement between the Lessor and Lessee executed prior to the end of the original Acquisition Period.

ARTICLE 4.

PAYMENT

- 4.1 **Amount and Times of Payment to Lessee:** Lessee agrees to pay Lessor or its assign the Lease Payments set forth in an Appendix in equal monthly, semi-annual or annual payments, or otherwise as set forth below. The initial monthly Lease Payment by the Agency shall be due on the first day of the month that is the second month following the Vendor Payment Date. The initial semi-annual Lease Payment by the Agency shall be due on the first day of the month that is six months after the month following the Vendor Payment Date. Initial monthly or semi-annual Lease Payments shall include accrued interest from the Vendor Payment Date. Interest shall be calculated on a 30/360 basis.

Lease Payments may be made, upon mutual agreement between the Lessor and the Lessee on an annual basis. For annual lease payments, the initial Lease Payment by the Agency shall be made on the first day of the month which is twelve months after the month following the month of the Vendor Payment Date as shown on an Appendix. Accrued interest and regular interest shall be calculated as stated herein.

Invoices shall be submitted by the Lessor directly to the Agency at the Agency Billing Address shown on the Appendix with a payment term of not less than 30 days. All invoices shall show the state Contract/Agreement number and the federal employer identification number of the Lessor. Lessor may coordinate an alternative payment method (e.g., EDI or other electronic means) with the consent of the Agency.

All payments will be made in accordance with the Virginia Prompt Payment Act. The date of postmark where payment is made by mail, the date of the express mail package where payment is made by express mail, or the date of the transfer where payment is made electronically shall be deemed to be the date of payment by the Agency to the Lessor.

Except as provided in Section 4.4, the Agencies shall be required to make Lease Payments and any other payments required hereunder. Notwithstanding any dispute between Lessee and Lessor or any other person, Agencies shall make all Lease Payments and other payments required hereunder when due and shall not assert any right of set-off or counterclaim against its obligation to make such Lease Payments or other payment required under this Agreement.

- 4.2 **Amount and Times of Payment By Lessor:** Payment by Lessor must be made to 1) Agency's Vendor(s), 2) the Agency, where the Agency has made payment directly to the Vendor, or 3) the Escrow Agent in the case of an Escrow Financing, on or before the Vendor Payment Date as set forth in an Appendix. The amount of payment will be stated in an Appendix. Late payment by Lessor may cause liquidated damages to be paid by Lessor to Lessee pursuant to Section 4.8 below, provided such Vendor Payment Date shall not be less than seven (7) calendar days after the Acceptance Date.

The date of postmark where payment is made by mail, the date of the express mail package where payment is made by express mail, or the date of the transfer where payment is made electronically shall be deemed to be the date of payment by the Lessor to the Vendor, the Agency, or the Escrow Agent, as applicable. As evidence of payment, Lessor shall return to Lessee immediately upon payment a signed copy of the Disbursement Authorization Certificate.

Lessee shall provide appropriate documentation evidencing an official intent to reimburse for any Appendix where proceeds will be used to reimburse the Agency for a prior expenditure.

In the case of an Escrow Financing, The Parties hereto and an Escrow Agent shall enter into a mutually acceptable Escrow Agreement. Lessee agrees to pay an Escrow Fee as defined herein. The Escrow Fee may be paid from escrow earnings.

4.3 **Maximum Payment:** Except as provided in Sections 5.3 and 7.2, the total charges paid by an Agency shall not exceed the amount of funds calculated on an Appendix.

4.4 **Subject to Appropriation:** All funds for Lease Payments are subject to the availability of a legislative appropriation for this purpose. In the event sufficient funds are not appropriated, Lessee will use its best efforts to immediately notify Lessor of such occurrence.

In the event of non-appropriation of funds for any or all of the Projects under this Agreement, the Agreement will terminate on the last day of the fiscal year period for which appropriations have been authorized. Any termination under Section 7.1 will result in the termination of the entire Agreement. Written notice will be provided to the Lessor within thirty days after legislative action is completed.

In the event of a termination of this Agreement for non-appropriation, Lessor shall have the right to repossess the Project and any funds held under any Escrow Agreements without being subject to an action for trespass or conversion or the recovery by the Agency of any sums previously received under this Agreement. The proceeds of any sale or leasing of any Project repossessed pursuant to this Section 4.4 will be applied to the payment of the unpaid balance of the Agencies' obligations under this Agreement.

4.5 **Events of Default by Lessee:** The occurrence of any of the following events shall constitute an Event of Default by the Lessee under this Agreement:

- a) The nonpayment by an Agency of any Lease Payment required hereunder, or the default by the Lessee or an Agency in the performance of any of the obligations, covenants, terms and provisions contained or referred to in this Agreement, which nonpayment or default is not cured within thirty (30) days of the receipt of written notice (certified mail, return receipt requested) thereof from Lessor to Lessee and Agency; provided, however, the termination as described in Article 7 shall not constitute a default hereunder and shall not give rise to any of the remedies hereinafter authorized.
- b) Any warranty, representation, or statement of Lessee contained in this Agreement proves to have been false in any material respect when made or furnished.
- c) Loss, theft, substantial damage, destruction, sale, or encumbrance of or to any of the Projects, or the making of any levy, seizure or attachment thereof or thereon provided that the Lessee is not taking steps to replace, repair, or remove any encumbrances from such Projects.

4.6 **Events of Default by Lessor:** The occurrence of any of the following events shall constitute an Event of Default by Lessor under this Agreement:

- a) Late payment by Lessor to Agency's Vendor, or the Agency, or the Escrow Agent, as applicable.
- b) Any warranty, representation, or statement of Lessor contained in this Agreement proves to have been false in any material respect when made or furnished.

4.7 **Remedies of Lessor:** Upon the occurrence of an Event of Default, the Lessor may, at its option, take any one or more of the following actions:

- a) Declare the entire amount of unpaid Lease Payments for the current biennium due under this Agreement to be immediately due and payable, without further notice.
- b) Repossess the Projects without being subject to an action for trespass or conversion or the recovery from Lessor of any sums previously received in this Agreement.
- c) Retain prior payments and all funds held under any Escrow Agreements, and sell or lease the Projects through public or private transaction after giving Lessee reasonable notice with or without having the Projects at any such sale or leasing. Lessor may purchase all or part of the Projects as a result of such transactions. The proceeds of any sale or leasing will be applied to the payment of the unpaid balance of Lessee's obligations under this Agreement. Lessee shall remain liable for any deficiency of payment for the current biennium.
- d) Institute all remedies available to Lessor as allowed by law.
- e) Terminate this Agreement.

Lessor's attempt to exercise any of the remedies set out above entitles Lessee to prepay, without notice, as provided in Section 7.2 herein, notwithstanding any provisions in this Agreement to the contrary.

4.8 **Remedies of Lessee:** Upon the occurrence of an Event of Default by Lessor, the Lessee may, at its option, take any one or more of the following actions:

- a) Should Lessor not make the entire payment on or before the Vendor Payment Date as described in Section 4.2, Lessee may require payment of liquidated damages at the rate of one percent (1%) per day of the principal amount of the equipment purchase as designated in the related Disbursement Authorization Certificate. The amount of the damages will be paid by Lessor to Lessee.
- b) Institute all remedies available to Lessee as allowed by law.
- c) Terminate this Agreement. Such termination shall not affect Lessee's obligations with respect to any Appendix previously entered into by Lessor and Lessee and pursuant to which any Project shall have been financed by Lessor.

ARTICLE 5.

RESPONSIBILITIES OF LESSEE

5.1 **Care and Use of Project:** Lessee, at its own expense, shall obtain remedial and preventive maintenance to keep the Project in good operating condition.

- 5.2 **Inspection:** Subject to security regulations, Lessee will allow Lessor to enter the premises where the Project is located during normal business hours for the purposes of inspecting the Project and observing whether Lessee is in compliance with its responsibilities.
- 5.3 **Taxes and Licenses:** The Commonwealth of Virginia is exempt from Federal excise taxes and from all State and Local taxes. In the event that the Project or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Commonwealth shall, during the term of this Agreement, pay the amount of all such taxes, assessments and governmental charges then due, subject to the availability of appropriations therefore. The Commonwealth may, at the expense of and in the name of the Commonwealth, in good faith contest any such taxes, assessments and other charges in any reasonable manner which does not adversely affect the right, title and interest of Lessor in and to any Project or its rights or interest under this Lease or subject any portion of any Project to loss or forfeiture, and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest or any appeal therefrom.
- 5.4 **Assignment or Delegation by Lessee:** Lessor agrees that Lessee may, upon written notice, assign all or any part of its rights and obligations under this Agreement or in the Project to another agency of the Commonwealth of Virginia, provided such assignment does not affect the current federal tax status and Lessor has consented in writing to such assignment, provided that Lessor's consent shall not be unreasonably withheld.
- 5.5 **Delivery of Related Documents:**
- a) For any Project, prior to the Vendor Payment Date, Lessee shall provide:
 - i) A Financing Request Certificate for Lessor's review and approval.
 - ii) An Appendix in substantially the form shown in Attachment A.
 - iii) Financing statements or other documents to evidence Lessor's security interest, provided that such statements shall not impose liabilities and/or responsibilities inconsistent with this Agreement.
 - iv) A copy of IRS Form 8038-G or 8038-GC; original to Internal Revenue Service.
 - b) For each Project, Lessee shall provide upon written request of the Lessor:
 - i) Agency's maintenance Contract on the Project, if applicable.
 - ii) Such other documents at the time of execution as the parties reasonably believe necessary to protect their interests in this Agreement and in the Project, provided that no such document may impose liabilities and/or responsibilities on the Lessor or Lessee inconsistent with this Agreement and no such document is deemed to be incorporated into, nor to amend nor to alter the terms of this Agreement.
 - c) Upon the settlement date of the Agreement, a Certificate of Counsel.
 - d) Upon settlement of the Agreement and thereafter as changes occur, Lessee will provide listing of Authorized Representatives to Lessor.
 - e) Upon settlement date of the Agreement and on the policy renewal date of each year thereafter, Lessee will provide a certificate of insurance or self insurance to Lessor.
 - f) Neither the Commonwealth nor any officer or agency of the Commonwealth shall be required to furnish any documents or other assurances for the purpose of enabling or aiding the public sale or offering for limited sale of securities by the Lessor, its assignees or others, including, but not limited to, certificates pertaining

to arbitrage or the exemption of interest on such securities from federal, state or local taxation.

5.6 Liability and Property Insurance: During the term of this Agreement, the Lessee agrees to pay for and provide, or to cause to be paid for or provided, the following insurance coverages or self-insurance programs with respect thereto:

- a) Insurance in the amount of the full replacement cost of the Project against the risk of any direct physical loss of or damage to the Project. Such insurance shall be in the standard form for such coverage carried by the Commonwealth at the time in use throughout Virginia. The deductible amount shall be the standard deductible amount at the time in use by the Commonwealth throughout Virginia. The proceeds of such insurance coverages shall be applied to the repair or replacement of the Project or the purchase thereof as provided in Section 7.2.
- b) Comprehensive general liability insurance against liability for death or bodily injury and for damage to and loss of the use of Project, arising out of the ownership, maintenance or use of the Project, which insurance coverage shall not be circumscribed by any endorsements limiting the breadth of coverage (limited only as may be provided in the standard form for such coverage at the time in use in Virginia). The proceeds of such insurance coverages shall be applied to satisfaction of the liability.

Each insurance policy or rider or self-insurance program required by this Agreement shall name Lessor as an additional insured party and/or loss payee. Before the expiration of any such policy or rider or self-insurance program, Lessee shall furnish to the Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions hereof.

5.7 Damage to or Destruction of Project: If after delivery of any Project to Lessee all or any part of the Project is lost, stolen, destroyed or damaged beyond repair, Lessee shall as soon as practicable after such event either: (a) replace the same at Lessee's sole cost and expense with Project of equal or greater value to the Project immediately prior to the time of the loss occurrence, such replacement Project to be subject to Lessor's reasonable approval, whereupon such replacement Project shall be substituted in this Agreement and other related documents by appropriate endorsement or amendment; or (b) pay the prepayment price as set forth in Section 7.2 hereof and the applicable Appendix. Lessee shall notify Lessor of which course of action it will take within fifteen (15) days after the loss occurrence. If Lessee fails or refuses to notify Lessor within the required period, Lessor may, at its option, declare the applicable prepayment price as set forth in Section 7.2 hereof of the Appendix to which such Project belongs immediately due and payable, and Lessee shall be obligated to pay the same. The net proceeds of all insurance payable with respect to the Project shall be available to Lessee and shall be used to discharge Lessee's obligation under this Section. Upon payment of the prepayment price as set forth in Section 7.2 hereof with respect to any Appendix, this Agreement shall terminate with respect to such Project and Lessee thereupon shall become entitled to such Project on an AS IS, WHERE IS basis and Lessor makes no warranties or representations of any type as to the Project, except that such Project shall not be subject to any lien or encumbrance created by or arising through Lessor.

5.8 Risk of Loss: Unless Section 6.9 of this Agreement is applicable, all risk of loss to the Project arising out of the ownership, possession or use of the Project shall be borne by Lessee.

- 5.9 **Budgeting:** The Agency, or assignee pursuant to Section 5.4, shall include in its budget proposals for review and consideration by the Commonwealth in each biennium in which an Appendix is in effect, items for all Lease Payments required under this Agreement in the ensuing biennium.
- 5.10 **Application of Funds:** All funds authorized or appropriated for payments under this Agreement shall be applied by the Agency to such payment requirements.

ARTICLE 6

PROJECTS

- 6.1 **Title:** Title to the Project on an Appendix shall pass to the Lessee upon acceptance thereof. Title will revert to Lessor upon termination or the occurrence of an Event of Default pursuant to Section 4.5.a through 4.5.c.
- 6.2 **Security Interest:** The Lessee grants to Lessor and Lessor retains a purchase money security interest in the Project. Lessee will not change or remove any insignia or lettering which Lessor may place on the Project to indicate its interest therein until all Lease Payments are made. Until all Lease Payments are made or prepayment is complete, Lessee shall keep the Project free from any lien, encumbrance or legal process which would conflict with this security interest.
- 6.3 **Filing:** Subject to the provisions of Section 5.5.a.iii, Lessee authorizes Lessor to make Lessor's security interest a matter of public record by filings of any standard documents necessary for that purpose. Lessee agrees to sign or execute such documents to evidence its consent to the filing. Lessee will provide sixty (60) days written notice to Lessor that the Project is being relocated to insure that Lessor may perfect additional filings as necessary.
- 6.4 **Personal Property:** The Project shall remain personal property of the Lessee and shall not be deemed to have become real property regardless of the manner in which it is affixed to real property.
- 6.5 **Alterations, Additions, Attachments:** Lessor hereby agrees to allow the Lessee to add and attach to the Project such additional Project, facilities or fixtures as the Lessee may subsequently acquire (exclusive of repair, service replacement parts, which do not constitute new Projects, etc.) notwithstanding the form of financing that the Lessee might use, which additional Projects, facilities or fixtures shall not be a part of or subject to this Agreement, unless by express written amendment.
- 6.6 **Removal of Alterations, Additions, Attachments:** In the event title to the Project reverts to Lessor, Lessee, at its own expense, will remove all alterations, additions and attachments and repair the Project as necessary so as to return the Project to the condition in which it was furnished, reasonable wear and tear excepted. Lessee will not be responsible for any maintenance or repairs, however, under this Section 6.6 if Project has been under a continuous maintenance agreement since the Acceptance Date.
- 6.7 **Return of Project:** Upon rightful demand of the Lessor for the Project, as specified herein, listed in any attached Appendix, Lessee shall deliver possession of the Project to Lessor in the condition in which the Project is required to be maintained according to this Agreement. In such event, Lessee will, at its own expense, deliver the Project to Lessor at a location designated by Lessor; such location, however, shall not be more than 100 miles from the Lessee's business location. Lessee will not be responsible for any shipment charges beyond the 100 mile limit.

- 6.8 **Quiet Enjoyment:** The Lessee shall be entitled to possess and use the Project during the term of this Agreement without interruption by the Lessor, provided that the Lessee has duly performed its obligation under this Agreement. Any Project acquired under the terms of this Agreement may be operated at any time at the convenience of the Lessee (exclusive of time required for preventive maintenance, remedial maintenance and/or approved engineering changes). There shall be no restrictions as to consecutive hours, length of personnel shifts, etc., unless such restrictions are specifically incorporated in an Appendix. Lessee may make Project available to other Agencies of the Commonwealth of Virginia or any other users provided that such use is supervised by the Commonwealth, such Project is used for governmental purposes and Lessor has consented in writing to such use by a substitute user, provided that Lessor's consent shall not be unreasonably withheld.
- 6.9 **Liability of Lessor:** Notwithstanding Section 11.2 of this Agreement, in the event that the Lessor is required to perform work at the Lessee's location and such work is performed by Lessor or its agents, the Lessor shall (1) maintain such bodily injury and property damage liability insurance as necessary to protect itself from claims arising out of performance of this Agreement, and (2) indemnify and hold harmless the Commonwealth, its agencies, employees and designated representatives from any and all claims, suits, actions, liabilities, and costs of any kind, including attorney's fees for bodily injury and damage to real or personal property arising from acts or omissions of the Lessor, its agents, officers, employees, subcontractors or assigns.

ARTICLE 7.

TERMINATION

- 7.1 **Termination:** This Agreement shall remain in force for the periods set forth in each Appendix, provided, however, the Lessee, through its Authorized Representative, may terminate any Appendix at the end of any biennium, upon thirty (30) days notice subsequent to learning that funds authorized or appropriated to the applicable Agency have been terminated and the Agency is not otherwise able to meet its obligations hereunder.
- 7.2 **Prepayment:** Lessee shall have the right, exercisable as of any date following the execution of an Appendix, to prepay an Appendix at the following prepayment prices, expressed as a percentage of the principal amount outstanding, plus accrued interest to the prepayment date:

<u>Prepayment Period</u> <u>(all months inclusive)</u>	<u>Prepayment</u> <u>Prices</u>
Vendor Payment Date to 6 months	103%
7 to 12 months	102%
13 to 18 months	101%
over 18 months	100%

Lessee's right hereunder shall be exercised by:

- a) Agency advising Lessee and Lessor, in writing, of its intention to prepay its obligations hereunder and the effective date of that payment ("Prepayment Date"), such date being the regularly scheduled monthly, semi-annual, or annual payment date,
- b) Agency paying Lessor the prepayment price as of the Prepayment Date together with interest from the most recent Payment Date to and including the Prepayment Date, and
- c) Upon prepayment, Agency will pay any sums in arrears, if any.

- 7.3 **Lessee's Rights on Prepayment or Payment in Full:** Upon (1) Lessee's exercise of its right of prepayment in accordance with the preceding subsection or (2) Lessee's having satisfied all of its monetary and other obligations hereunder, Lessor shall deliver to Lessee all documents necessary to evidence the termination of Lessor's interest in the Equipment and to confirm the Project is free and clear of any claim or lien arising through Lessor. The Project will be accepted by Lessee at that time on an AS IS, WHERE IS basis and Lessor makes no warranties or representations of any type as to the Project.

ARTICLE 8.

ASSIGNMENT BY LESSOR

- 8.1 **Right of Assignment:** This Agreement shall be binding upon and inure to benefit of the Lessor and Lessee and their respective successors and assigns. This Agreement, Lessor's rights hereunder, or the obligation hereby described are not assignable except as provided in Section 8.2 or transferable except by written mutual agreement of the parties hereto.
- 8.2 **Assignment By Lessor:** Neither the Lessor nor its assignees may, by assignment of this Agreement or otherwise, publicly sell or offer for limited sale securities based on the Commonwealth's obligations under this Agreement without prior written approval of the Lessee. No approval of the Lessee shall be required for the transfer by the Lessor of all of its interest in this Agreement to a partnership or trust for the limited offering of interests therein to qualified institutional buyers or other accredited investors within the meaning of the applicable federal securities laws. The Lessee may require such written assurances, indemnifications, legal opinions, and other measures as it or the Office of the Attorney General may deem necessary to protect the interests of the Commonwealth.

The Lessor may assign the payment obligations of an Agency pursuant to an Appendix to an investor provided that the payments by the Agency will continue to be made to the Lessor. Lessor shall, as agent for Lessee, keep a record of all such assignments in compliance with section 149(a) of the Internal Revenue Code of 1986, as amended.

ARTICLE 9.

WARRANTIES AND REPRESENTATIONS

- 9.1 **Warranties and Representations of Lessee:** The Lessee represents and warrants to the Lessor and, so long as this Agreement is in effect or any part of Lessee's obligations to the Lessor remain unfulfilled, shall continue to warrant at all times, that:
- a) Lessee is duly organized and validly existing and has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.
 - b) This Agreement and all other Transaction Documents and the performance of Lessee's obligations thereunder have been duly and validly authorized and approved under all laws and regulations and procedures applicable to Lessee, the consent of all necessary persons or bodies has been obtained and all of the Transaction Documents executed by Lessee have been duly and validly executed and delivered by Authorized Representatives and constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms.

9.2 **Warranties and Representations of Lessor:** Lessor represents and warrants to Lessee and, so long as this Agreement is in effect or any part of Lessor's obligations to Lessee remain unfulfilled, shall continue to warrant at all times that:

- a) Lessor is a corporation or other entity in good standing under the laws of the Commonwealth of Virginia and has the power and authority to enter into the Transaction Documents to which it is a party and to carry out the terms thereof.
- b) The Transaction Documents executed by Lessor have been duly authorized, approved, executed and delivered by its authorized representatives and constitute legal, valid and binding obligations of Lessor enforceable against Lessor in accordance with their respective terms.

ARTICLE 10.

GENERAL

- 10.1 **Waiver:** No delay or omission by either party in exercising any right in any of the Transaction Documents shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude either party from any or further exercise of any right or remedy.
- 10.2 **Heading:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provisions of this Agreement.
- 10.3 **Severability:** In the event any portion of this Agreement shall be finally determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be stricken and this Agreement, as modified, shall continue in full force and effect.
- 10.4 **Governing Laws:** This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia without regard to the conflict of laws rules of any state.
- 10.5 **Implementation:** This Agreement shall be implemented by its execution or execution of Appendices hereto. For purposes of construing a transaction as an integrated contract and for the purposes of the provisions of Article 8, the following shall be considered a single transaction or legal binding agreement:
 - a) The Agreement, which provides basic terms and conditions.
 - b) An executed Appendix, which provides for the description of the Project to be purchased, the payments from Lessee to Lessor for the purchase of such Project and the prepayment amounts.
- 10.6 **Amendment:** Neither this Agreement nor any of the Transaction Documents may be amended unless the same be in writing, signed by the parties hereto, and approved by the Office of the Attorney General.
- 10.7 **Contractual Records:** All contractual books, records and other documents related to matters under this Agreement shall be made available by Lessor to Lessee and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.
- 10.8 **No Waiver:** Nothing contained in this Agreement shall be deemed or be construed to be an express or implied waiver of the sovereign immunity of the Commonwealth of Virginia or a pledge of the full faith and credit of the Commonwealth.

- 10.9 **Disputes:** Any dispute, claim or cause of action filed by Lessor (or any party making such claim on behalf of or under the rights of Lessor, his agents or any subcontractor) shall be governed by §11-69, 11-70, 11-71, *Code of Virginia* (1950), as amended, and any period of limitation set forth therein.
- 10.10 **Entire Agreement:** This Agreement and the Solicitation, Offer and Award, which are incorporated herein by reference, and the Appendices as may be hereafter executed, constitute the entire Agreement between the parties hereto. All prior negotiations, representations and additional or inconsistent oral or written statements are superseded, null and void. Should there be any contradictions in terms between this Agreement and the Solicitation, Offer and Award (which is incorporated herein), the terms of the Agreement control.
- 10.11 **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

ARTICLE 11.

DISCLAIMER OF WARRANTIES

- 11.1 LESSOR MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, RELATING TO THE EQUIPMENT; AND LESSOR HAS EXPRESSLY MADE NO WARRANTY AS TO THE VALUE, DESIGN, CONDITION, MERCHANT ABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EQUIPMENT.
- 11.2 Lessor shall not be liable to the Lessee for any liability, loss or damage caused or alleged to be caused, directly or indirectly, by the Project or by any inadequacies thereof or deficiency or defect therein, or by any incident whatsoever in connection therewith. The Lessee shall be entitled to the benefit of any applicable manufacturer's warranties. Lessor agrees to execute and deliver such further instrument as may be necessary, in the reasonable opinion of the Lessee, to enable it to enforce such warranties and obtain the warranties and service furnished for the Project by the manufacturer.

ARTICLE 12.

SIGNATURES

- 12.1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

LESSOR

COMMONWEALTH OF VIRGINIA
TREASURY BOARD

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

APPENDIX NO. _____

ACCEPTANCE CERTIFICATE
(Schedule 1)

[Contract No. TB06-004]

The Commonwealth of Virginia, acting by and through _____ the (Agency) hereby accepts for purposes of the Master Lease Agreement dated October 1, 2005 (the Agreement) by and between _____ and the Commonwealth of Virginia, the Equipment/Project described below, evidencing acceptance pursuant to the Agreement. Pursuant to the Agreement, the undersigned Agency hereby certifies that the Equipment/Project described below (i) has been delivered to the Agency and installed at _____ (ii) has been fully and finally accepted by the Agency and (iii) has been found by the Agency to be in good working order. (All capitalized terms in this Appendix have the meanings set forth in the Agreement.)

<u>Quantity</u>	<u>Manufacturer/ Seller</u>	<u>Description</u>	<u>Identification or Serial No.</u>	<u>Cost</u>
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COMMONWEALTH OF VIRGINIA
TREASURY BOARD

(Agency Head or Designee)

By: _____
(Signature)

(Name - Type or print)

(Title)

Dated: _____

By: _____
(Signature)

(Name - Type or Print)

(Title)

Dated: _____

APPENDIX NO. _____
DISBURSEMENT AUTHORIZATION CERTIFICATE
(Schedule 2)

[Contract No. TB06-004]

In accordance with the terms of the Agreement dated as of October 1, 2005 by and between _____ and the Commonwealth of Virginia by and through the Treasury Board acting on behalf of the Commonwealth, the Commonwealth hereby submits this Disbursement Authorization Certificate to request a disbursement under the Agreement for certain Equipment/Project shown on Schedule 1 of this Appendix. The Commonwealth represents and warrants for all purposes of this Certificate that:

1. The amount of the disbursement pursuant to this Certificate is \$ _____. Such disbursement is to be made on or before _____ (the "Vendor Payment Date").
2. Payment of the disbursement requested hereby is to be made to _____ (the vendor, or the Agency in the case of a reimbursement, or the Escrow Agent in the case of an Escrow Financing) at the following address:

_____ (name)
_____ (tel. no.)
3. Attached hereto is a copy of an executed UCC-1 form or other appropriate financing statement, in proper form for filing, evidencing the Lessor's security interest in the Equipment/Project with respect to the disbursement under this Certificate.
4. Attached hereto are vendor invoices (or proof of payment in the case of a reimbursement, or an Escrow Agreement in the case of an Escrow Financing) substantiating this disbursement authorization.

COMMONWEALTH OF VIRGINIA
TREASURY BOARD

(Agency Head or Designee)

By: _____
(Signature)

(Name - Type or print)

(Title)

Dated: _____

By: _____
(Signature)

(Name - Type or Print)

(Title)

Dated: _____

APPENDIX NO. _____

DISBURSEMENT AUTHORIZATION CERTIFICATE
(Schedule 2 Continued)

[Contract No. TB06-004]

5. Lessor hereby certifies that the payment to (the vendor, the Agency in the case of reimbursement or the Escrow Agent in the case of an Escrow Financing) was made on _____ and payments shall begin to be made to the Lessor on _____ at the following address pursuant to Schedule 4 of this Appendix.

(LESSOR)

By: _____
(Signature)

(Name - Type or Print)

(Title)

Dated: _____

APPENDIX NO: _____
AGENCY REPRESENTATION CERTIFICATE
(Schedule 3)

[Contract No. TB06-004]

_____ (the Agency) represents and warrants to the Lessor and the Lessee that:

1. The Agency is a duly organized and validly existing agency of the Commonwealth of Virginia.
2. The Energy Project is of a size, design, capacity and manufacture selected by the Agency and the Agency has selected the Energy Project of a design, type and size for the purposes for which the Energy Project is intended.
3. The Agency's participation in the Agreement and the performance of the Agency's obligations thereunder have been duly authorized under all laws, regulations and procedures applicable to Agency.
4. The Agency has obtained the consent of all necessary bodies and the Agency has the power to enter into and carry out its obligations under the Agreement.
5. The Agency has complied with all statutory requirements pertaining to the acquisition of the Energy Project, including those applicable to capital projects as provided in the *Code of Virginia* and the Appropriation Act.
6. Funds have been specifically provided for lease payments in the Agency's current appropriations for the Energy Project and said funds are sufficient to make the payments contemplated under the Agreement through the end of the current biennium.
7. The Agency shall include in its budget proposals for review and consideration by the Commonwealth in each biennium in which this Appendix is in effect, an item for payments required under the Agreement in the ensuing biennium.
8. The Energy Project is personal property, has a useful life greater than or equal to the term on an Appendix and will be used for essential governmental purposes.

(Agency Head or Designee)

By: _____
(Signature)

(Name - Type or print)

(Title)

Dated: _____

APPENDIX NO: _____

AGENCY REPRESENTATION CERTIFICATE
(Schedule 3 Continued)

[Contract No. TB06-004]

Agency Contact for this lease:

Name: _____

Address: _____

Phone: () _____

Vendor Contact for this lease:

Name: _____

Address: _____

Phone: () _____

Agency Billing Address for lease payment invoices:

Specific billing reference, if any, (i.e. P.O. #, Contract #, RFP #, etc.)

APPENDIX NO. _____

PAYMENT SCHEDULE CERTIFICATE
(Schedule 4)

[Contract No. TB06-004]

Pursuant to the terms of the Agreement, the Commonwealth requests that the lease purchase of the Energy Project with respect to this Appendix in the amount of \$_____ be financed over a _____ year period. Based on the Acceptance Date, the Index for this financing is _____. Based on the Index, the interest rate for this financing is _____%.

The initial payment for this financing is \$_____, thereafter, the _____ payment will be \$_____. The schedule of lease payments for the Equipment with respect to this Appendix is as follows:

[See attached Debt Service Schedule]

COMMONWEALTH OF VIRGINIA
TREASURY BOARD

By: _____
(Signature)

(Name - Type or Print)

(Title)

Dated: _____

APPENDIX D
SPECIMEN CERTIFICATE OF COUNSEL



COMMONWEALTH of VIRGINIA

**Office of the Attorney General
Richmond 23219**

900 East Main SVW
Richmond, Virginia 23219
804 - 786 w 2071
804 - 371 - 8946 TDD

CERTIFICATE OF COUNSEL

This Office serves as counsel to the Treasury Board, Lessee under Master Lease
dated October 1, 2005 and all subsequent Appendices to be executed thereunder (together,
the Agreement) between the Commonwealth of Virginia (the Commonwealth), acting by and
through the Treasury Board, and _____ (the Agreement).

In our capacity as counsel to the Treasury Board, the Office of the Attorney General
has examined the Agreement and performed such other examinations as it deemed
appropriate and it has advised the Treasury Board that for the period October 1, 2005 through
September 30, 2007:

1. The Treasury Board is an agency of the Commonwealth of Virginia and is
authorized by the laws of the Commonwealth of Virginia to enter into the transactions
contemplated by the Agreement and to carry out its obligations thereunder;
2. The obligations of the various agencies and institutions of the Commonwealth (the
Agencies) to make Payments under the Agreement are enforceable only if and to the extent
the project financed is within the scope of the Master Lease Agreement that funds for such
purposes are appropriated therefor by the General Assembly;
3. No approval, consent or withholding of objection is required from any
governmental authority with respect to the entering into or performance by the Treasury
Board of the Agreement or the transactions contemplated thereby, or if any such approval is
required, it has been obtained;
4. The Agreement has been duly authorized, approved, executed and delivered by and
on behalf of Lessee and, except as otherwise provided herein, the Agreement is a legal, valid
and binding obligation of Lessee enforceable in accordance with its terms;
5. The Agreement is approved as to form;

6. This Certificate shall not be deemed to confer any authority or obligation upon the Lessee to the Lessor or Lessor's assignees other than that which may exist under the laws of the Commonwealth of Virginia in the absence of this Certificate.

BY Donald Ferguson
Senior Assistant Attorney General

DATE: October, _____